

Child Custody Issues Specific to Scotland

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O & A Fact Sheet

- **Is there a general custody law that covers all of the UK? Do Scotland, England, and Northern Ireland have separate legislation?**
Scotland has separate legislation from England and Northern Ireland. The main piece of legislation in Scotland that regulates the relationship between children, parents, and other people who may be involved in raising a child is the Children (Scotland) Act 1995. You can view the 1995 Act online at:
http://www.legislation.hmsso.gov.uk/acts/acts1995/Ukpga_19950036_en_1.htm
- **Do married parents have equal rights of custody to their minor children? What about children born out-of-wedlock? What rights does an unwed father have and how does he obtain them?**
Married parents have equal rights of custody. The Children (Scotland) Act 1995 details “*parental responsibilities and rights*” or PRRs that parents have for their children. PRRs include the responsibility (and the corresponding right) to:
- safeguard and promote the child’s health, development and welfare
 - provide direction and guidance to the child
 - maintain direct contact and personal relations with the child, if he or she does not live with you
 - act as the child’s legal representative

A child’s mother has PRRs automatically. A child’s father will have automatic PRRs only if he was married to the mother at the time of conception or subsequently. A father who was never married to the mother can acquire PRRs by marrying her, by completing and registering a Parental Responsibilities and Parental Rights Agreement (PRPRA), or by seeking them from the court. The PRPRA (under Section 4 of the 1995 Act) is available at
<http://www.scotland.gov.uk/Topics/Justice/Civil/17867/10388>.

You can also view the Scottish Executive booklets *Your Children Matter* and *You Matter*. The former is aimed at parents and the latter at children. If you would like copies of the booklets, you may write to the Scottish Executive at the address given at the top of this document, or e-mail family.law@scotland.gsi.gov.uk, or call (44) (0) 131 244 3581.

***The Family Law (Scotland) Bill, which the Scottish Executive introduced to Parliament on 7 February 2005, contains a provision to give PRRs to unmarried fathers who register the birth of their child jointly with the mother. The change will not affect existing fathers. Scottish authorities anticipate that the new law will be in operation around spring 2006. You should take independent legal advice if you are uncertain about your responsibilities and rights.**

- **Are there special courts that hear custody disputes (family law courts)?**
At this time, only Glasgow has a family law court. In the rest of Scotland, most family cases are heard in an ordinary Sheriff court, although they can also be heard in the Court of Session, Scotland's supreme civil court.
- **Are there special terms that I should know?**
Scotland uses the terms "residence" and "contact" instead of "custody" and "access." Note that "residence" is not synonymous with "custody," nor is "contact" the same as "access." Under the Children (Scotland) Act 1995, the court can make any orders it thinks fit in relation to parental responsibilities, parental rights, and guardianship. Section 11(2) of the Act defines some of the orders that the court can make. Below are some of the orders listed in Section 11(2). In deciding whether to make an order, and what order to make, the court must hold as its paramount consideration the welfare of the child involved. It must also not make any order unless to do so is better than to make none at all.

PRRs (Parental Responsibilities and Rights)

The court can:

- Deprive a person of some or all of his parental responsibilities or parental rights in relation to a child
- Impose upon someone who is at least 16 years old, or is a parent of the child, parental responsibilities in relation to the child
- Give someone parental rights in relation to a child

Contact and Residence

The court can make a "residence order," setting out with whom a child under 16 years of age is to live, or setting out with whom and during what periods if the child is to live with different people at different times. It can also make a "contact order" regulating the arrangements for maintaining personal relations and direct contact between a child under the age of 16 and a person with whom the child is not or will not be living. The court can vary its orders (for instance, make a residence order giving residence

to the non-resident parent.) It could also consider the person not complying to be in contempt of court, and impose a fine, a custodial sentence or both. In deciding how to deal with someone who does not comply with an order, the welfare of the child is the primary consideration.

Specific Issues

A “specific issue” order is when the court makes an order regulating a specific question. This might be about a child’s name, religion, schooling, or a holiday outside the UK.

Interdict

The court can make an order prohibiting anything specified in the order. It could, for instance, make an order prohibiting a parent from changing a child’s name, or taking the child to a particular country.

➤ **What happens when a custody dispute case is filed?**

In most cases the court will order a child welfare hearing, which will take place very soon after the case begins. You should seek independent legal advice on your particular circumstances.

➤ **Can a parent remove a child from the UK without the consent of the other parent?**

Section 2 (3) of The Children (Scotland) Act 1995 prevents a child who is habitually resident in Scotland from being removed from the UK without the consent of persons exercising the right of contact or residence. In addition, Section 35 of the Family Law Act 1986 enables a court in Scotland to grant an interdict against a child being removed from the UK.

➤ **Do both parents have to agree to the issuance of a British passport? If there is a U.S. custody order restricting passport issuance, can a parent in the U.S. ask that a British passport not be issued?**

Provided that no objection has been lodged with the UK Passport Service by a parent or other objector, passport facilities are normally granted to children with the consent of either parent (or parent acting *in loco parentis*.) If the parents were not married to each other at the time of the child’s conception or subsequently, the mother’s consent is required if the father has not been given parental responsibility or parental rights.

➤ **Is parental abduction a criminal offense?**

Section 6 of The Child Abduction Act 1984 makes it an offence for a person connected with a child under the age of 16 years to take or send the child out of the UK without the appropriate consent, if there is an order of the court awarding custody of the child to another person. In the UK, child abduction is a criminal offense punishable by up to seven years in prison. If a parent has abducted their child, the left-behind parent may file a Hague Convention complaint.

➤ **What is the Hague Convention?**

The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* is a multilateral treaty, which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return.

➤ **Which documents are needed for Hague applications?**

- Certified marriage and birth certificates
- An affidavit covering the background of the case and the removal of the child from the place of residence

For more information on International Children and Family Services, and the Hague Convention, please visit www.travel.state.gov/family.